

Anticipating the Status Quo in Manchester, Texas
The First Community Environmental Audit Agreement
Gregg P. Macey

History

The Houston Ship Channel, one of the busiest, most prosperous ports in the world, is home to the largest concentration of petrochemical operations in the United States.¹ Oil tankers, cargo ships, liquid petroleum gas carriers, and other bulk carriers move continuously up and down the narrow channel, their huge engines burning “bunker oil,” the cheapest, dirtiest fuel available.² Each year, these vessels release 273,000 tons of nitrogen oxides into the air.³ The channel itself also carries the distinction of having some of the most polluted water on Earth, a mixture of industrial wastes and sewage that has at least twice caught fire.⁴ On May 11, 1990, a Panamanian freighter dumped its wastes into the channel. The waterway, as well as the ship, exploded into flames.⁵

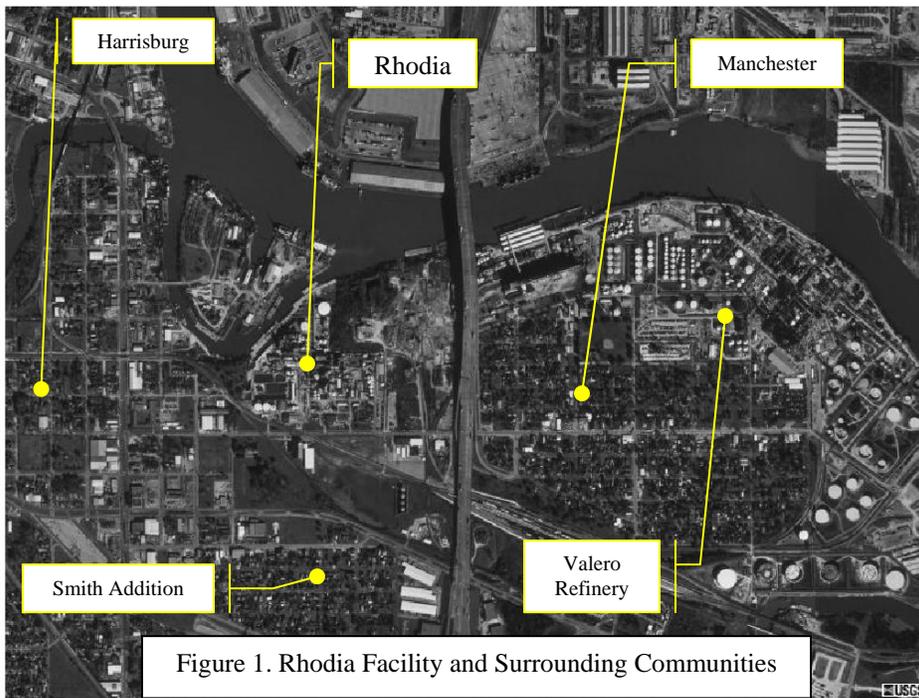


Figure 1. Rhodia Facility and Surrounding Communities

The region surrounding the channel includes numerous, predominantly Hispanic residential developments. Communities such as Manchester, which lies at the confluence of Sims Bayou and the Ship Channel,⁶ were born in the early 1920's as

¹ Freemantle, T. (2002). Ships fouling the air: State regulators have few remedies for pollution issue. *Houston Chronicle*, July 21, 2002 at 1A.

² Category 3 vessels, which carry most of the world's cargo, are fueled by bunker oil, which is the residue of the production of higher-grade fuels. Bluewater Network (2000). *A Stacked Deck: Air Pollution from Large Ships*. July 17, 2000.

³ *Ibid.* See also industrial accidents. *Houston Chronicle*, October 24, 1989 at 15A (“The worst industrial accident in U.S. history occurred when the French ship Grandcamp exploded while docked at Texas City. The vessel was loaded with ammonia nitrate fertilizer. The next day, another ship, the High Flyer, also blew up. Authorities said 576 people were killed and another 5,000 were injured.”).

⁴ Tutt, B. (1993). Did channel really catch fire? *Houston Chronicle*, September 4, 1993 at 37A.

⁵ *Ibid.*

⁶ August 3, 1997.

refinery and ship workers began to build homes on small lots worth about 450 dollars apiece.⁷ Over time, Manchester⁸ grew into a working-class Hispanic community, sandwiched between the Channel (to the North), a refinery (now owned by Valero, to the East), a railroad yard (to the South), and a sulfuric acid processing facility (to the West), owned by the French multinational Rhone Poulenc (now Rhodia). An “enclave of faded wooden houses and taquerias languishing in the shadows and the stench of the petrochemical industry,” Manchester, as well as Smith Addition (an African- American settlement south of Rhodia) and the multiracial Harrisburg (west of Rhodia), faced many challenges. For one, they lacked some of the basic services that towns their size had come to expect.⁹ Harrisburg and Smith Addition civic clubs struggled for years with the Greater East End Management District to enforce anti-dumping laws and to monitor illegal disposal of tires, furniture and household hazardous wastes.¹⁰ The Management District recently has only recently donated a video camera to be installed at a dumping hotspot.¹¹ Endangered historical markers, garbage dumping, graffiti removal, unnecessary stoppages of residents by the local police, abandoned homes, cluttered lots, and dangerously deep drainage ditches along residential streets were consistent matters of concern to members of the three communities.

While such a scattered list of concerns could seem disorienting to a local public official, there was for many years a common rallying point that stirred the minds of those in the area: the railroad tracks that crisscross the communities.¹² Over one thousand boxcars (40% of which carry dangerous or flammable cargo) lumbered across the tracks at Central and Manchester Avenues every day, sealing off the only points of entry for emergency services into Manchester.¹³ The principal of J.R. Harris Elementary, located right down the street from Rhone Poulenc, used to watch children throw their bicycles under stalled trains, crawl under, and pull them out on the other side on their way to school.¹⁴

⁷ Interview with Manchester Civic Club President, April 16, 2002 in Manchester, TX.

⁸ Houston’s Planning Department classifies communities as “Super Neighborhoods,” including the Harrisburg/Manchester area, to assist in local service provision. This area in 1990 included 3,895 people, (81% Latino and 10% African-American). Seventy-six had not graduated from high school and more than half of the households had incomes below \$25,000. Still, the area maintained a rate of homeownership (80%) above that of the city at large (63%). City of Houston Department of Planning and Development, Super Neighborhood Resource Assessment, Harrisburg/Manchester, June, 1999.

⁹ Manchester lacks a fire department or a library, for example.

¹⁰ Interview of Harrisburg Residents, April 19, 2002, in Harrisburg; Interview of Smith Addition Residents, April 19, 2002, in Smith Addition.

¹¹ Weber, R. (2001). Sense of urgency: Eastender wants cleanup ‘before God calls me’. *Houston Chronicle*, August 9, 2001 at 1 (This Week).

¹² Edleson, H. (1985). Chronicle report: The East End: Residents challenge change in awakening neighborhood. *Houston Chronicle*, March 24, 1985 at 9.1; Brewer, S. (1997). Forgotten promises: Many residents in southeastern neighborhood feel that city’s mayoral race is passing them by. *Houston Chronicle*, September 29, 1997 at 13A; *Supra* note 10; *Supra* note 6.

¹³ Zuniga, J. (1993). Residents finally supported on overpass. *Houston Chronicle*, April 9, 1993 at 27A; Brewer, S. (1998). Idling trains strain patience of motorists: Officials seek answers from Union Pacific. *Houston Chronicle*, February 9, 1998 at 13A (MetFront); Vaughn, C. (2002). Rail plans raise resident concerns. *Houston Chronicle*, January 17, 2002 at 1 (This Week).

¹⁴ *Supra* note 13.

Manchester was in a state of flux in the early 1990's when the local precinct judge received word from a union worker at Rhone Poulenc that the company was pursuing a permit amendment. The facility needed to reclassify several hazardous waste materials that were already being recycled on-site.¹⁵ At the time, the blue-collar community experienced a wave of immigration that, according to some longtime residents, yielded a number of distinct groups of residents in terms of how they perceived environmental conditions. New arrivals lived mostly in apartments and developed few attachments to the community, staying for as long as it took to save enough to move elsewhere. Starting in the mid-1980's, these and other residents began to find it increasingly difficult to find work at surrounding industries, and the "walk-to-work" incentive that had encouraged employees to construct modest wooden homes on the plot of land began to erode:

Because you have another neighborhood across from the other big street, which is Lawndale, and there's another small community like this, and it was all Hispanic and blacks and a few whites. And then across Broadway, which is about a mile and a half down, there's basically the same thing. You had the blacks and the Hispanics that wanted to live close to whatever job they had. Whether it was at the docks, or at the cement plant, the chemical company, the refinery, or the railroad. And like I say, back then, all you needed was a strong back and you know, a little common sense. And you get a job. They say "OK, we'll hire you." Or somebody recommended you. It doesn't work this way now...The only place is I guess the docks, where they don't ask you if you have a college education. We have one, two, three real close docks right here¹⁶

Unlike the new wave of immigrants from Central and South America, those who had lived in Manchester for most or all of their lives watched as relatives who worked at the plants grew older and often died of cancer.¹⁷ This group of senior citizens consisted of homeowners mostly of Mexican ancestry, and was the primary group organized in opposition to Rhone Poulenc's proposed permit modification. A third group, also consisting of homeowners, was not as familiar with the plight of former refinery and shipyard workers but was more concerned about environmental conditions than the newly arrived population of renters but also more engaged in daily blue collar issues that affected their jobs, homes, and children.

Environmental conditions at facilities such as Rhone Poulenc began to improve starting in the early 1990's while issues that more directly impacted residents' quality of life worsened. Toxic releases, beginning in 1989, dropped precipitously, and the spate of accidents at former Stauffer Chemicals subsided for the time being.¹⁸ At the same time, truck traffic became more visible. The number of accidents, involving haulers of hazardous chemicals increased. Accidents occurred as the trucks, carrying molten sulfur and other materials, traveled on residential streets or overturned while exiting the I-610 bridge.¹⁹

¹⁵ Campbell, J. (1991). Residents vent anger at chemical firm. *Houston Chronicle*, November 22, 1991 at 38A.

¹⁶ Interview of Manchester resident, April 16, 2002, in Manchester.

¹⁷ Interview of Houston City Councilperson, April 17, 2002, in Houston.

¹⁸ For a history of Rhodia's toxic releases, see http://www.scorecard.org/env-releases/facility.tcl?tri_id=77012STFFR8615M#data_summary. Historic accidents preceding the purchase of the facility by Rhone Poulenc are described below.

¹⁹ *Supra* note 17.

Within this setting, the first permit-driven “good neighbor agreement” signed between residents and a neighboring industrial facility was developed. Community-corporate compacts, or good neighbor agreements (GNA’s) are terms used to denote “instruments that provide a vehicle for community organizations and a corporation to recognize and formalize their roles within a locality.”²⁰ Armed with toxics release inventory data, pollution monitoring results, or stories of residents’ daily experiences living next to polluting industries, citizen groups are sometimes able to organize campaigns to bring industries who are in violation of local ordinances to the bargaining table. There, parties seek mutually beneficial solutions to problems stemming from their operation within the community. Involvement of these stakeholders can help to compensate for the lack of resources available to the EPA in regulating industrial activities.²¹ In a shift from command-and-control regulations that focus on the management of end products of industrial processes and the shifting of effluent from one medium to another (air, water, and soil), GNA’s can engage industries in serious discussions regarding pollution prevention strategies.²² At the same time, stakeholder audits and negotiations can potentially increase access to information about operations, worst case scenarios, and other vital data that will facilitate the exploration of creative solutions and monitoring of agreements reached. These developments reinforce Congress’s attempt to encourage emissions reductions through passage of the Pollution Prevention Act and other legislation in the early 1990’s.²³

Prior to 1991, the term “good neighbor agreement” was used to describe settlements reached after considerable mobilization by residents against owners of particularly noxious or dangerous sites. The use of a permit change or renewal as a leverage point for encouraging constructive negotiations was the subject of discussions but had not yet been successfully achieved.²⁴ In Texas, the shift to this strategy grew out of *ad hoc* attempts by an environmental organization to discourage further allowable emissions from some of the many facilities in the area (in addition to Rhone Poulenc and the refinery, facilities owned by Goodyear, ExxonMobile, Texas Petrochemical, and Lyondell-Citgo dotted the landscape) and elsewhere across the state. The lead proponent of community organizing around petrochemical plants was the statewide environmental advocacy group, Texans United (TU). Prior to Rhone Poulenc’s proposed permit modification, TU was involved in two attempts to negotiate a “precedent-setting good neighbor agreement,” with Exxon in Baytown and the Star Refinery in Port Arthur.²⁵

²⁰ Lewis, S. (1999) Good neighbor agreements, a tool for environmental and social justice. *Social Justice*, 23(4).

²¹ Adriatico, M. (1999). The good neighbor agreement: Environmental excellence without compromise. *Hastings West-Northwest Journal of Environmental Law and Policy*: 5: 285.

²² Lazarus, R. (1992). Pursuing environmental justice: The distributional effects of environmental protection. *Northwestern University Law Review*, 87: 787-857.

²³ 42 U.S.C. § 13,101(b)(1994). See also the Environmental Protection Agency’s Pollution Prevention Strategy, 56 Fed. Reg. 7849 (1991).

²⁴ Interview with Community Organizer, April 18, 2002, in Houston.

²⁵ TU newsletters (*Exxon: How to be a Bad Neighbor*, January 1990; *Sanctions Sought for Information Denial*, Spring, 1992; *Refinery Inspection by Environmental, Church, and Labor Representatives – A Texas First!*, November, 1990).

The first one, I believe it was Exxon in Baytown, and we actually went into negotiations, built a grassroots group called Baytown Citizens Against Pollution, had meetings with the company, and then that just completely fell apart. The company refused to negotiate what we asked for, which was a citizen inspection with an authorized, I mean with an expert that the citizens chose and had confidence in, an independent expert the company was to pay for. Exxon wasn't willing to do that, and then set about trying to divide the group and publicly accused me of going up in their plant and taking a sample. I took it where they discharged into Galveston Bay. When they accused me of [taking the sample from inside the plant] I sued them for slander, defamation. Then we eventually challenged their permit for that discharge point and filed a citizens' suit for violation of the Clean Water Act and eventually won that. That whole battle took about five years, so that's where we went in, met with the company, tried to negotiate, and then the company didn't want to negotiate and we ended up fighting them in the regulatory arena and in the courts. And for five years. But we tried first the constructive approach, and Exxon wasn't interested in doing that. Star Refinery, you know, we had not done anything over in Port Arthur. We had a board member and groups over there, so in that case we did negotiate with the company, the company did agree to an independent, we call it environmental and safety audit. We picked the expert, someone that I had met when I first came to Texas, and went in the plant, interviewed workers, looked at records, physically inspected the plant, and the company split the cost of the auditor. We chose him and the company approved him and the company split the cost. And some people in our group wanted to share in that cost because they felt the results would be more credible. But anyway, the recommendations were made, a report was issued, and the company refused to implement the recommendations²⁶

TU learned some important lessons from its early experiences with community-corporate negotiations. First, it was important to narrow the scope of a community's requests or what they wanted to accomplish *before* negotiations commenced. With Exxon, TU was unable to choose an isolated problem area or unit within the facility to focus on throughout discussions with plant management. Following their interaction with Star Refinery, the group further realized that reaching agreement was a hollow victory as long as a company was not convinced that implementing its various provisions was in fact beneficial to itself. TU continued its search for a precedent-setting agreement with modified criteria for selecting an appropriate site for their next organizing campaign: an organized or close-knit community, a serious problem, a facility that was not unreasonably complex (as was the Exxon refinery), and a "winnable fight" that would have repercussions for other industries in the region. Rhone Poulenc and the Manchester community seemed to meet all of these requirements.

The Problem

The Rhone Poulenc facility had been operating since 1917.²⁷ Starting in 1955, when the plant was acquired by Stauffer



Figure 2. Rhone Poulenc facility seen from Manchester under 610 bridge.

²⁶ *Supra* note 22.

²⁷ Proposed Rules: Environmental Protection Agency, 40 CFR Part 261, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion. Federal Register 64(199): 55880-55882.

Chemical Company, the plant regenerated sulfuric acid from spent sulfuric acid, sulfur, and bauxite.²⁸ It began to use waste-derived fuel in 1976 in order to provide energy for the regeneration process, which required that a certain amount of wastes be added to an acid-producing furnace (the facility did not receive a RCRA permit for this activity until March, 1987). In 1985, the 46-acre site began to shift ownership frequently. Stauffer Chemical became a subsidiary of Cheeseborough-Ponds. Ownership was subsequently transferred to Unilever, Imperial Chemical Industries, Akzochemie, and finally Rhone Poulenc Basic Chemicals in January 1990.²⁹

Changes in environmental regulations at the state and federal levels reclassified some of the wastes used in Rhone Poulenc's incineration process "hazardous," meaning that permit alterations were required for several Rhone Poulenc-owned facilities, including a plant in Hammond, Indiana.³⁰ At the time (1990), the facility did not have as sophisticated a set of environmental professionals or internal policies for dealing with regulatory changes as it does today. Plant managers were given a lot of discretion in handling public relations, but they rarely remained at a site for more than three years. Prior to the proposed permit modification, the Manchester community and Rhone Poulenc management had failed to develop any kind of relationship institutionalized by regulation, organization, or trust.³¹

Interestingly, former site owner Stauffer Chemical did not have to contend with public opposition when it sought a permit at the same site to become the second commercial facility in the state to accept and incinerate toxic waste from other companies in 1986.³² Facing a slowdown in the oil industry (one of its primary customers), Stauffer responded to new provisions added to the Resource Conservation and Recovery Act that encouraged incineration and other alternatives to landfilling.³³ The first commercial incinerator to take industrial waste in Texas was operated in nearby Deer Park by Rollins Environmental Services starting in 1981. The project was the focus of intense opposition as it was the first commercial incinerator to receive a permit to burn polychlorinated biphenyls (PCBs). While the Stauffer plant did not accept PCBs, it did burn organic wastes such as benzene and carbon tetrachloride, both of which are carcinogenic. Still, the company avoided serious opposition by engaging with community leaders, residents, public officials, and environmental experts at local universities to explain plant operations. These meetings were set up in addition to regular discussions held following two sulfuric acid leaks in 1980, one of which sent 54 to the hospital. Community leaders,

²⁸ Jill Burris, Field Investigator, Region 12, TNRCC to File, Re: Rhodia, Incorporated, June 18, 1999.

²⁹ As companies merge, so do their corporate nameplaces. *Houston Chronicle*, January 9, 1990 at 4 (Business); Stauffer Chemical being sold in \$1.69 billion deal. *Houston Chronicle*, June 6, 1987 at 2 (Business).

³⁰ Interview with former Plant Manager, Rhone Poulenc Basic Chemicals, April 1, 2002 via telephone.

³¹ *Supra* note 30.

³² Britt, B. & Warren, S. (1986). Gasoline leaks drive local residents away. *Houston Chronicle*, December 14, 1986 at 1.

³³ Dawson, B. (1985). Permit sought to commercially incinerate hazardous wastes. *Houston Chronicle*, July 25, 1985 at 21.

including Councilman Ben Reyes, believed that the company had “cleaned up its act” in the few years directly preceding their move into hazardous waste incineration.³⁴

Members of the three surrounding neighborhoods speak of *serious* environmental problems as diminishing by the time Rhone Poulenc requested a permit modification in 1991. Residents of Smith Addition recall a facility that was once located “in front of Rhone Poulenc” that consisted of a series of storage tanks that “used to catch fire and you could feel the heat standing over here.”³⁵ The Hill Chemical Company, located near Manchester and San Saba Streets where Smith Addition begins, experienced a gasoline tank leak in 1986 that forced 50 families to leave their homes.³⁶ A blaze also occurred in November, 1988 when a pipe carrying oil into a diesel heater ruptured at Hill Chemical.³⁷ A third major incident involved a lightning-induced fuel oil tank explosion at the same facility that could be heard for five miles and sent flames 200 feet in the air in September, 1990.³⁸ Harrisburg residents recall a facility known as Eddie Oil Refinery as “the only plant that we really had trouble with”:

It’s no more in existence, the one that was right, I live at a dead-end street, and across the track was Eddie Oil Refinery. They changed its’ name to Key Oil Refinery. And I can tell you about that because my brother worked there from the age of 18 until he passed away. That was the most dangerous place that was close to us, because it was always exploding and putting out chemicals and finally they closed it down, because it was just really unsafe...The back part of it ran right into our street which was on Magnolia. The oil company itself, the refinery part is gone. They tore it down. So that was the closest environmental problem we had to us³⁹

Memories of such facilities and images of the particularly dramatic episodes that they caused formed a mental baseline for the level of environmental quality that residents experienced. They also shaped residents’ perceptions of what further pollution reduction efforts were needed and their evaluations of environmental performance at facilities that remained. While Rhone Poulenc had to contend with the troubled past of Stauffer Chemical, it was not perceived as the primary source of environmental problems by at least two of its neighboring communities. And within Manchester, where Rhone Poulenc’s small relative contribution to area toxic emissions had yet to be understood, the company had substantial room in which to improve its image and relations with concerned citizens. Stauffer Chemical’s record of accidental releases as well as permitted toxic releases was well-known to regulators and citizens alike, although the company had succeeded in building support for some of its operational changes.⁴⁰

³⁴ *Ibid.*

³⁵ Interview with Smith Addition residents, April 19, 2002, in Smith Addition.

³⁶ *Supra* note 32.

³⁷ Kreps, M. & DiSessa, B. (1988). Pipeline inferno fizzles; residents return to homes. *Houston Chronicle*, November 29, 1988 at 13A.

³⁸ Perry, E. (1990). Lightning may have sparked tank blast. *Houston Chronicle*, September 16, 1990 at 30A.

³⁹ Interview with Harrisburg residents, April 19, 2002, in Harrisburg.

⁴⁰ Interview with Texas Natural Resources Conservation Commission official, August 14, 2002 via telephone.

The emerging regulatory framework was in large part responsible for Rhone Poulenc's facility-wide emissions reductions starting in the late 1980's. One of the most effective environmental statutes, Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986, directed industries that met certain requirements to maintain inventories of hazardous chemicals stored, processed, and emitted from their facilities.⁴¹ The release of TRI data started in 1987. The data were made available through local libraries and later the internet, and interpreted through analyses of the data comparing states, counties, and industries in terms of relative emissions. These reports, by the EPA, the Environmental Defense Fund, and other organizations, encouraged industries to pursue both real cuts in emissions and diversions of emissions to unreported media (such as deep well injections).⁴² Nevertheless, TRI emissions dropped substantially at many facilities, including Rhone Poulenc's Manchester plant. By the time residents began organizing around the proposed permit modification in 1991, the facility accounted for a small percentage of toxic emissions affecting the three surrounding communities (see Figure 3 for one comparison).

The Dispute

On January 16, 1991, proposed actions regarding the Rhone Poulenc facility began to appear on the agenda of the Texas Water Commission:

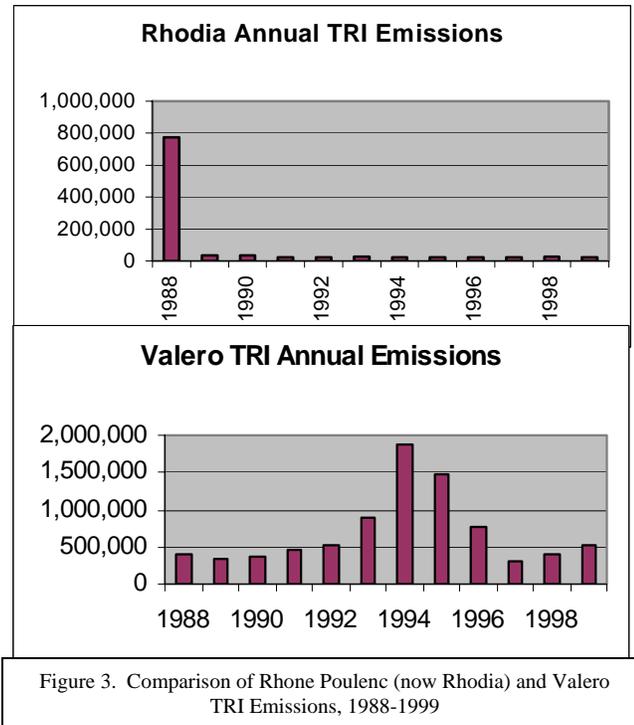


Figure 3. Comparison of Rhone Poulenc (now Rhodia) and Valero TRI Emissions, 1988-1999

Item 31. Application by Rhone Poulenc Basic Chemicals Company (formerly Stauffer Chemical Company) for a minor amendment to Permit No. HW-50095 which currently authorizes a commercial industrial hazardous and non-hazardous solid waste storage and processing facility. The facility is located at 8615 Manchester Road, west of Loop 610 East in the City of Houston, Harris County, Texas⁴³

⁴¹ Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001-11050 (1986) mandates that the Environmental Protection Agency provide the public with access to all annual information collected on routine releases of certain chemicals (specifically those which fall within Standard Industrial Classifications 20-39 and are released from facilities that employ ten or more workers and use more than 10,000 pounds of a listed chemical within a calendar year. This information is presented in a searchable index and in map form at <http://www.scorecard.org>.

⁴² Fung, A. and O'Rourke, D. (2000). Reinventing environmental regulation from the grassroots up: explaining and expanding the success of the Toxics Release Inventory. *Environmental Management*, 25(2): 115-127.

⁴³ Uncontested Agenda, Wednesday, January 16, 1991, Texas Water Commission.

The proposed change was listed as a “Class 2” modification. A class two modification simply requires a company to issue a notice through the local paper and hold a public hearing where they review the proposed changes to a facility. While Rhone Poulenc considered its proposed changes “nothing of consequence,” the dozens of residents that attended initial meetings with the company were determined to call for a Class Three format. Class Three applications undergo a formal discovery and evidentiary process and in some respects mimic legal proceedings. At the time, the Texas Water Commission had a legal department charged with handling the public interest aspects of permit modifications. This department had the authority to alter applications and to move them from Class Two to Class Three status.⁴⁴

On November 21st, the company held an informational meeting at the JR Harris Elementary School.⁴⁵ The permitting manager, Floyd Dickerson, explained that it was necessary to modify the permit to reflect changes in how the EPA classified several hazardous waste materials currently recycled at the plant. For the 40 residents at the meeting, most of whom had been recruited by the precinct judge by flier, it was their first opportunity in years to voice their frustration with the plant. First, they did not feel that placing an ad in the Houston Post and the Spanish language El Sol and notifying a few residents by letter was sufficient. Some of the residents spoke of the dangers of living near the facility. Diane Olmos told of her husband, who died at the age of 38 after living adjacent to a toxic waste disposal company similar to Rhone Poulenc.⁴⁶ Also of importance was the presence of a number of important local elected officials, such as State Senator John Whitmire, who due to redistricting had a strong Hispanic opponent challenging him at the time.⁴⁷ Rhone Poulenc’s plant manager agreed to make a more concerted effort to notify Manchester residents of a second meeting, which was planned for January, 1992. By then, precinct judge Carol Alvarado was able to mobilize newly elected councilor-at-large Gracie Saenz, State Representative Mario Gallegos, Gene Green, a candidate for U.S. Congress, Rick Noriega, a candidate for State Representative,

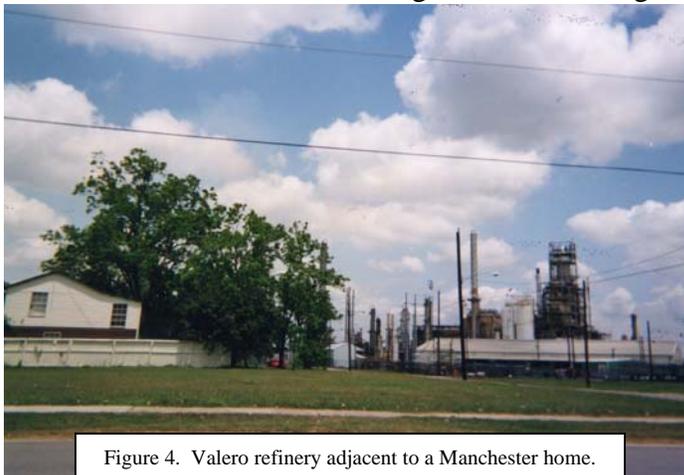


Figure 4. Valero refinery adjacent to a Manchester home.

and Mario Quinones, a civic leader and retired local businessman, among others. Through a list of residents provided by Alvarado, plant manager Bill Colvin notified most of the residents of a second meeting, called a “community day,” scheduled for January 1992 at the community center. By the time this second informational meeting was over, it was clear to Rhone Poulenc management that they would have to contend with

⁴⁴ *Supra* note 30.

⁴⁵ *Supra* note 15.

⁴⁶ *Ibid.*

⁴⁷ Interview of State Senator, April 18, 2002 in Houston.

a Class 3 modification process. Alvarado had convinced the TWC to require a formal hearing.

Between the “community day” and the formal hearing, several developments began to increase the community’s leverage over the permit modification process. Timing became an important factor as the process expanded. Rhone Poulenc had customers who were already shipping waste to the Manchester facility that would in several months be reclassified. Second, commercial hazardous waste incinerators were becoming some of the most visible targets of environmental groups in the state. Dubbed the “new environmental menace,” multi-million dollar incinerator projects were surfacing all over the country, in response to RCRA amendments that imposed strict requirements for the operation of hazardous waste landfills, such as the installation of double liners.⁴⁸ Houston’s Chemical Services had just won approval to build the fourth commercial hazardous waste incinerator in the state, and the many elected officials rallying around the Manchester community were well aware of the growing public concern over such facilities. Finally, on July 16th, a toxic cloud of sulfur dioxide gas was released at the Rhone Poulenc facility, sending 30 plant workers to the hospital (including 20 from Newpark Shipbuilding and Repair, located across the Ship Channel).⁴⁹ The accident was caused by a two-inch pipe that broke as a truck was being moved at the plant’s loading site. Importantly, the latter two developments heightened resident awareness of the risks posed by the facility at large, rather than the specific operations mentioned in the proposed modification. The sulfur dioxide incident increased regulatory scrutiny of the facility, which faced potential occupational health and safety as well as environmental violations by the TWC, OSHA, and the City of Houston.

The hearing, held on June 30th, began with a hearing examiner explaining that the focus of the meeting would be restricted to the proposed permit changes. Local residents, who had by this time had sought the assistance of Texans United, had other plans. Areas of concern, some of which barely overlapped with Rhone Poulenc’s operations (let alone proposed changes), were many and diffuse, including railway traffic and blockages to the streets, chemical releases to air, water, and soil,⁵⁰ truck traffic on residential streets, citizen participation in site-specific decisions and awareness of potential risks posed by the site, and emergency preparedness. While Rhone Poulenc did not have the ability to address some of the residents’ concerns, they agreed to meet with a small group of residents to discuss conditions for their dropping all opposition to the proposed modifications.

Dispute Resolution

Manchester residents were the only citizens to request party status to the hearing process, following the advice of TU. Because of this, the exclusion of Smith Addition and

⁴⁸ Morris, J. & Dawson, B. (1990). Nobody’s neutral about toxic waste incinerators. *Houston Chronicle*, October 22, 1990 at 11A.

⁴⁹ Perry, E. (1992). 27 injured by toxic fumes at chemical plant. *Houston Chronicle*, June 17, 1992 at 9A.

⁵⁰ Although Rhone Poulenc accounted for a very small fraction of these emissions. In 1991, TRI emissions from the facility totaled 19,000 pounds compared with half a million pounds by the Valero refinery, which encircled Manchester to the East.

Harrisburg residents was not of concern to any of the parties. Plant management was aware of these communities, particularly Smith Addition, described as “closer to the plant but not nearly as organized.”⁵¹ Providing a forum in which the concerns and interests of surrounding communities could be aired was also not necessary given the purpose of the discussions agreed to by the plant manager. Knowing that changes in waste classifications were not going to happen for several months, the company saw the proposed discussions as an opportunity to establish a structured relationship with nearby residents, which had not materialized since Rhone Poulenc had assumed ownership of the facility:

At that time, because I had quite a bit of time. These changes in the classifications weren't actually going to take place for several months, and I knew I had the time to try to work with the community and see if I could resolve this. And one of our goals was to come out of this with an advisory panel. And so that's the way I sort of approached this: you know, if you want to have an agreement, our agreement will be to work with the community, but we're going to have to organize a group, an advisory committee, and this document will basically establish ground rules on how we'll work and who will be on it and what issues we're going to talk about⁵²

Plant management entered negotiations confident that the Texas Water Commission would grant their permit modification. They also were aware of the growing scrutiny that their facility was receiving, and of the hostile community relations that would prevail should talks break down.

Texans United viewed contested hearings as an assured means of “getting to the table” with a company:

We didn't have lawyers, they did, and they were going to have to pay their lawyers, and the discovery process – I mean you get to look at all their records about complaints, upsets, relevant to the permit it was an air pollution permit. So we could have found out about all their releases, near misses, accidents, and we would have gone after all of that. And there's a hearing examiner that acts like a judge and what they always do, before they go through this formal contested case hearing, is they try to get the parties together and say you guys talk about this and see if you can resolve it before this hearing. The hearing's expensive for the state, a lot of work for everyone and they want to avoid it. So that kind of automatically puts you at the table with the company.

As the community began to prepare to negotiate with facility management, TU was still learning how to structure good neighbor agreements, which until then were usually typed on one or two sheets of paper and did not include provisions for implementing audit findings or ensuring on-going citizen involvement.⁵³ As stated, one of its earlier lessons was to narrow down what a community wanted to accomplish when discussing a given facility with its management and legal representatives. TU and local residents carried out an informal discovery process prior to the hearings in order to focus their objectives, even though their demands would remain wide-ranging. Residents credit TU for “taking us through the discovery process.”⁵⁴ In addition to helping residents request party status,

⁵¹ *Supra* note 30.

⁵² *Ibid.*

⁵³ *See*, for example, Settlement Agreement with Merichem Company (no date) and Settlement (with ARCO Chemical), February 14, 1992.

⁵⁴ *Supra* note 17.

TU shared its knowledge of how to ask for certain kinds of information, summarized materials in terms of what they revealed regarding community impacts, and helped residents prioritize what they needed to understand from the outset.⁵⁵ Documents such as air pollution data, enforcement documents, and other public records in agency files (Texas Air Control Board, Texas Water Commission, Harris County Pollution Board) were used to give an indication of site-specific problems. As TU did not have any legal or technical capacity, a group of TU staff met with residents to pour through the documents and extract broad trends and concerns. These included *information sharing* (Rhone Poulenc had some SO₂ monitors in operation but had no means of distributing the results to neighboring towns), *truck traffic to and from the facility*, and *emergency preparedness* (Rhone Poulenc lacked an emergency notification system). TU experts were unable to figure out how the company could ensure further emissions reductions at its facility, and a review of their fugitive emissions showed that state regulations were already fairly stringent as to how long broken valves and flanges could be kept on a replacement list. As the contested case hearing process had not begun, the information available to residents and TU was limited. Discovery during a contested case hearing process allows residents to access anything related to the facility's emissions that is not proprietary: more detailed enforcement documents, interoffice communications about pollution events, and a variety of reports used by facility management to trace problems as they develop on-site.

Throughout negotiations with Rhone Poulenc and implementation of the agreement that followed, residents became increasingly acquainted with the facility's operations. It is instructive to consider how such a plant dealt with emissions on a daily basis, as it provides clues as to the extent to which residents' desired changes were acceptable or even possible from a permit applicant's perspective. Facility operators, engineers, and environmental professionals kept track of emissions through a variety of programs, some of which are mandated by their various permits and some of which are driven by site and upper management. Rhone Poulenc's permits called for the plant to monitor sulfur dioxide, nitrogen oxide, particulate matter, and hydrocarbon emissions, the latter produced mostly from fugitive emissions.⁵⁶ Because at one point Rhone Poulenc maintained storage tanks at its property line adjacent to the former Eddie Oil refinery site, the state set particularly stringent guidelines for fugitive emissions to make sure that future owners of the site would be protected.

If you had anything, 25 parts per million above background, which most places is 500 to a thousand parts per million or even higher than that, it's an action level and we can have it repaired within four hours⁵⁷

These conditions took effect in 1987. In addition to an array of monitors established for some chemicals, Rhone Poulenc was able to estimate emissions for others through trial burn factors. Under state permit, the facility submitted Discharge Monitoring Reports on a monthly basis that provided quantity and concentration figures for all "parameters"

⁵⁵ *Supra* note 17.

⁵⁶ Interview with Rhodia environmental professionals, April 23, 2002, at Rhodia, Manchester, TX.

⁵⁷ *Ibid.*

(substances) used during that period.⁵⁸ While the company engaged in pollution reduction projects, it believed that there was a limit to the control the company had over what is released in a given month:

This facility, we're not, there're not multiple changes occurring. It's the same project, same materials coming in. There's very little variance in what we're doing out here...The thing about this plant right here, is that we are an inorganic facility. So we don't – and what we do generate a lot of stuff, like some of the protective personal equipment that we use, some waste oils and stuff like that, we can burn on our permit ourselves. We generate ash from our furnace that is hazardous by nature, and that is basically driven by how much throughput of hazardous waste and our sulfuric acid we burn there, so that's a function of production. Then we have a filter cake, which is hazardous waste, based on some regulatory requirement, and that's again regenerated based on the amount of throughput through the unit. And it's all wastewater. So it's, some of these things we have, we really have no control. Business is high one year, down next year. The other, only other thing we can, state classifies it as hazardous, because of the acidic nature, is our wastewater here. And we have looked at ways of minimizing the amount of acid drips and stuff like that in the sewer system, so it will minimize the amount of, you know. It's cost-effective, too, because you don't have to neutralize everything. Those are the areas we can really come up with⁵⁹

Much of the discussions with Manchester residents focused on these limitations to further reducing emissions, caused by the stringency of existing permits and the nature of the sulfur regeneration process. It was claimed that there was a narrow range of “lost products” or emissions that if captured could be reprocessed and sold to various industries. In addition, plant management stated that there was little that could be done to change the facility's raw material feeds, which remained the same and fluctuated only according to the needs of Rhone Poulenc's customers: refineries (catalysts), carpet producers (fibers), and electroplaters (ultra-pure acid). But when one considers the facility's improvement programs today, it becomes clear that there were approaches to emissions reductions that could have been addressed during negotiations: reducing the risk of releases and containing accidental spills. Presently, the plant uses a hazardous operations methodology known as Layers of Protection Analysis (LOPA), which is a systems design approach to isolating opportunities for releases, understanding how protective devices or materials can fail, and ensuring that backups and secondary forms of containment are in place. A related initiative, mechanical integrity, is a records maintenance and analysis approach whereby equipment standards for things that can degrade or be corroded over time (pumps, gaskets, valves, pipelines) are researched. Equipment that is then determined high-risk or is found to be no longer maintained at an appropriate frequency is then addressed. These programs were not in existence when negotiations began.

When negotiations commenced on August 24, 1992, residents were not prepared to scrutinize the corrosive effects of Rhone Poulenc's production process on its equipment, or brainstorm potential management initiatives for dealing with this broad concern. With limited access to expert opinions about the facility, Texans United tried to figure out how Rhone Poulenc could reduce emissions, with limited success.

⁵⁸ Permit No. TX007072, discharge numbers 101A and 001A.

⁵⁹ *Supra* note 50.

They had the best available pollution control technology at the time. Reducing emissions wasn't – we couldn't get a handle on how they could do that. Now one of the things our expert looked at was the whole issue of fugitive emissions. He went through the files and all of that, and I don't think there was a recommendation that came out of that that they could do anything to further reduce emissions⁶⁰

In the absence of any known alternatives for emissions reductions, and lacking sufficient understanding of the business to consider such issues as mechanical integrity, residents and TU representatives focused on two kinds of proposals. It is important to note that none of these were made in any particular order, as the meetings were not bounded by groundrules or agendas (except for items proposed by plant management at the outset of each meeting), or assisted by any outside facilitation. And while elected officials were present at the first session, residents agreed to exclude them from negotiations. It was argued that most of the officials did not have to live with the consequences of what was being discussed. Further, they had an incentive to support an agreement that lacked substantive changes so long as it offered them positive publicity. Thus, roughly 5-6 members of a community-based negotiating committee, two representatives from TU, the plant manager, and a staff attorney from Rhone Poulenc discussed proposals at meetings held at St. Alphonsus' (a local Catholic church) and in a conference room at the facility. The first kind of proposal involved arrangements whereby the facility would create, share, or help the community gather information. A second kind of proposal was more controversial: duties that the facility would owe the community under various circumstances. Table 1, which outlines the negotiation process, includes some of the proposals made.

⁶⁰ *Supra* note 24.

Table 1. Manchester-Rhone Poulenc Permit Modification Negotiation Elements.

Element	Residents	Rhone Poulenc	TU
Initiation	Called for formal hearing; agreed to meet after first hearing	Called for formal hearing process; agreed to meet after first hearing	Attended preliminary meetings between residents and facility; asked to participate
Assessment	Engaged in voluntary discovery process with TU whereby they assessed the company's record of episodes, enforcement actions, emissions, and potential for emissions reductions; learned about general plant operations, what was processed, deliveries to the facility, truck routes, accident history, and violations ("nothing alarming"); little assessment of the broader conflict	Provided certain kinds of information to residents upon request; little assessment of the broader conflict	Assisted residents in prioritizing what they needed to know, summarizing information, and explaining how it impacted the community
Representation	At least four members of a broader negotiating committee composed of roughly 25 residents; staff from several offices of elected officials who did not directly negotiate the agreement; no representatives from Smith Addition, Harrisburg, or the businesses affected by a recent sulfur dioxide release	Plant manager and staff attorney	President and staff member
Rationale for Representation	Representatives of committee were strong leaders, with a history of political activism and business relations with Manchester residents; able to meet with newly founded Civic Club and communicate with broader community in an efficient manner	Most intimately aware of the facility's operations and broader regulatory trends. Given broad discretion in terms of the specifics of any agreement reached. Could communicate directly to upper management through the Vice President of Manufacturing	Provided needed technical and strategic advice to residents and could assist in organizing the broader community during ratification and implementation phases
Objectives	<ol style="list-style-type: none"> 1. Increase knowledge of and the ability to anticipate and respond to facility emissions and episodes 2. Eliminate blockages of access roads by railroad cars 3. Regulate truck traffic along residential streets 4. Address health effects of facility 5. Improve relations with the facility 	<ol style="list-style-type: none"> 1. Improve relations with the community 2. Structure relations with the community 3. Communicate and help community understand the nature of risks posed by facility operations 	<ol style="list-style-type: none"> 1. Develop a precedent-setting agreement that would influence other area and regional facilities 2. Ensure that the agreement included a community-driven audit of the facility and information exchange 3. Assist the community and determining its objectives and helping them to articulate these during negotiations
Best alternative to a negotiated agreement	Contested case hearing process would commence and they would force delays; ultimate granting of proposed permit modification assumed	Proposed permit modification would be granted; future relations with community more hostile, leading to additional contested permit changes, greater scrutiny by regulators; potential trouble with certain elected officials (i.e., Whitmire sat on committee that made appointments to TWC; Saenz could affect easements and rights-of-way for pipelines to and from the facility as well as municipal permits)	Would continue to provide assistance during contested hearing process; would eventually have to seek out other communities with whom to work toward negotiated agreements with facilities in need of permit modifications; potential lawsuit over property diminution or health effects
Proposals	Monitor contracted truck traffic; eliminate railroad blockages; increase monitoring of groundwater and air emissions; sharing monitoring and modeling results; fund a citizen's health survey, canvass neighborhood to determine symptoms of disease	Community Advisory Committee; emergency notification system	Same as residents' proposals except: against a health survey; wanted to set conditions for facility operations (i.e., residents able to notify facility and have it cease operations under certain conditions)
Groundrules/ Agenda	No groundrules; agenda was open except for plant management's proposals for mitigating resident concerns expressed at preceding sessions		

Residents realized early in the process that they would not be able to prevail in a contested case hearing. This understanding encouraged concessions on their part, such as decisions to drop most of TU's ideas for setting conditions for facility operations. Residents and TU were also divided in terms of how to approach resident health. Residents were strongly in favor of canvassing the neighborhood and collecting information on disease symptoms. Plant representatives opposed the proposal outright, believing the information would be inconclusive or simply misrepresentative of the sources of various symptoms. TU was also against entering into such an indeterminate cycle of talks over survey design, administration, analysis, and interpretation:

Just designing the health study could have been a whole separate negotiating process, and then whether or not it's scientifically valid, and then you get the results and they're going to be challenged. My position has always been, we don't have to get up there, we don't have to prove, we don't have to prove scientifically that these plants are hurting people. It's enough that people are sick, that they're complaining, that they can smell it; that's all the proof we need. That means that the companies need to do everything they can to stop the damn pollution...Just the possibility that the plants might be causing the problem is enough that they should be doing everything they can do to stop the pollution. It's kind of simple. And this whole thing about diverting us into this whole battle to prove it's really a problem⁶¹

They had health concerns, and they wanted to bring in people to do some kind of canvassing of the neighborhood to document all of the health concerns throughout. And this was a neighborhood that was right in the back of chemical plants, not just ours. I told them that we weren't willing to do that unless it was a – if they wanted to do something that was a recognized method and the technique they used was actually a recognized way of doing it and we had a non-biased group come in and do it, then it wouldn't be a problem. We would provide an amount of money and it would cost quite a bit more than that⁶²

Division among representatives of Manchester was at times overt, as with the proposed survey, and often subtler, in terms of the importance of an environmental audit vis-à-vis changes that would immediately impact the community's sense of quality of life. In spite of this, the process gained momentum, as the group set aside problematic ideas and proposals and focused on items that concerned (a) sharing information, studies, and scenarios that already had to be collected or created under various permits, (b) building relationships through development of an advisory committee, and (c) adding resident involvement to an environmental audit provision that was also required by the state. The most important dynamic within this timeframe concerned how an initial set of proposals would be offered. TU, based on previous experience, was convinced that the first single text should come from the company, as resident concerns and more appropriate wording could be added within a framework that made the company feel more at ease. What was put in writing was viewed by TU as a company's interpretation of what had been discussed and what they wanted to propose. Residents, in their opinion, should see how the company perceived the negotiation process before they proceeded.

As the date of a subsequent hearing approached, the company used an implied division between resident representatives and the broader community to encourage agreement. While it is difficult to prove that this approach affected the final agreement, it is

⁶¹ *Supra* note 24.

⁶² *Supra* note 30.

instructive in that community-corporate negotiations often hold the potential for lopsidedness: residents include a number of different groups from within and outside a given community while a company has a well-structured set of objectives and parameters to follow during negotiations. After roughly 4-5 sessions, the plant manager approached community leaders with an ultimatum:

It was getting close to the time for the hearing, and I just basically went in and said, you know, we've met with you for a while, we've had a lot of people in from the community and we've communicated to them what we're trying to do and we want to share with them and how we want to get them involved. But some of the stuff you're asking for is so far out that we're never going to be able to agree to it. And if you don't back off on all this, then we're going to go back, we're going to drop everything and go back to the public hearing, and not only will you not get anything out of this but, based on some of your demands, that even the community looks on as ridiculous, you're going to come out the bad guy on all of this⁶³

While the effects of such threats on an ultimate agreement cannot be verified (record-keeping during these negotiations was almost nonexistent), the company's perception that community representatives had divergent incentives to reach agreement is clear. A final agreement, signed shortly before the next hearing was to occur, excluded proposals for emissions reductions, resident control over facility operations, or meaningful assessment of community health. Table 2 outlines the elements of the good neighbor agreement.

Table 2. Settlement Agreement Elements to Class 3 Modification, Permit HW-50095.

Formation of a Community Advisory Committee, that differed from the chemical industry's community advisory panels in that it was geographically diverse, selected by local residents, given a precise geographic boundary, and was to consider a set of informational topics on a consistent basis (including business conditions, turnarounds, shutdowns, expansions, milestones, hiring/layoffs, noise, odor, and other complaints)
Improvement of the local emergency notification system through CAC input into the system's design, a set timeline for implementation (120 days), and a minimal boundary for system coverage
RP agreement to improve its hazardous waste transportation routes and provide specific forms of information regarding its enforcement efforts of transportation requirements and restrictions to the CAC
Provision of any groundwater or surface water monitoring analyses to the CAC and an agreement to split samples with the CAC upon request
Provision of RP's employee health study to the CAC, and agreement to consider the feasibility of a citizens' health survey and to fund such a survey in an amount not to exceed \$4,000
Provision of OSHA-reportable accident information on a monthly basis to the CAC
Funding and participation by RP in an independent annual environmental and safety audit, the first of which should occur within 90 days of the issuance of the modified permit
Maintenance of an off-site sulfur dioxide monitoring system
Completion of dispersion modeling and hazard assessments to identify potential plumes of contamination into the community
Agreement not to receive household hazardous wastes unless RP will be able to operate within all permit parameters and the request for receipt of household hazardous wastes is issued by the TWC

⁶³ *Ibid.*

Implementation

On December 16th 1992, the following action was taken by the Texas Water Commission:

Item 50. Consideration of Examiner’s memorandum concerning the application of Rhone Poulenc Basic Chemicals Company for a Class 3 Permit Modification to authorize the operation of a hazardous waste incinerator storage and processing facility in Harris County, Texas (Recommendation: Issuance)⁶⁴

The examiner’s memorandum was adopted and the modification was granted. The Settlement Agreement became part of the permit and therefore prevailing regulations of the facility for the duration of its operation. While the agreement was hailed as a “first” in terms of “real access” to the facility, it did not depart from standard practice as radically as suggested in media coverage. First, many of the agreement parameters (including the audit, off-site monitoring, and data provision) were already required by state law. In fact, the audit provisions were already a part of the facility’s operational permit. Items that were not already required (such as a health survey) remain underdeveloped. TU has moved on to other struggles while much of the local leadership that was instrumental in encouraging negotiations with Rhone Poulenc has left Manchester. We will consider each of the major elements of the agreement in turn, and then focus on overarching trends that have emerged since the GNA was finalized.

Accidents/Emergency Preparedness. As noted earlier, toxic releases from the Manchester facility declined in the late 1980’s and stabilized at approximately 19,000 tons per year. In addition, accidental releases became almost nonexistent at the plant. Table 3 shows the history of plant episodes through the present.

Table 3. Incidents at 8615 Manchester Street, 1990-2002.⁶⁵

Date	Material	Quantity
February 27, 1990	Petroleum	95 gallons
September 25, 1991	Aluminum Sulfate	27,365 pounds
November 12, 1991	Sulfuric Acid	500 gallons
December 13, 1991	Aluminum Sulfate	5,000 pounds
January 21, 1992	Sulfuric Acid	Unknown
February 26, 1992	Weak Acid	3 gallons
June 12, 1992	Sulfur Trioxide	1 pound
June 16, 1992	Sulfur Dioxide	100 gallons
July 8, 1992	Sulfuric Acid	1,774 pounds
October 28, 1992	Hazardous Waste	10 gallons
March 17, 1993	Sulfuric Acid	200 gallons
November 10, 1995	Sulfur Dioxide	4 pounds
February 14, 1997	Sulfuric Acid	700 gallons
September 21, 1999	Oleum	Unknown
October 13, 2000	Sulfuric Acid, Sulfur Trioxide	Unknown
March 12, 2002	F003 Hazardous Waste	Unknown

⁶⁴ Third Addendum to Uncontested Agenda, Wednesday, December 16, 1992, Texas Water Commission.

⁶⁵ Sources: Emergency Response Notification System and National Response Center databases, accessed June 5, 2002 by United States Environmental Protection Agency, Region 6 as part of Freedom of Information Act request 06-RIN-00689-02, May 21, 2002.

The facility has averaged approximately one accidental release every two years during GNA implementation. Residents are also better informed in the event of an episode, through the emergency notification system that was designed as part of the GNA. The company purchased a radio station (1290 FM), established an alarm system that could be heard within a five mile radius of the plant (at a cost of \$250,000), and began weekly tests of the system every Saturday at noon.⁶⁶ While the system has proven effective in encouraging residents to shelter in place during the few accidents that have occurred, the idea of a public warning system was actually being negotiated between residents and city officials of a number of nearby cities (Channelview, Pasadena, Deer Park) before the GNA was reached.⁶⁷ In fact, dozens of chemical plants in the area had already agreed to cover the costs of phase I construction of siren warning systems.⁶⁸ As part of the Local Emergency Planning Committees (LEPC's) mandated by EPCRA, communities were working with area industries to plot public safety plans, use common computer programs, and share warning systems, relying on community advisory panels for advice. While the GNA secured a system for Manchester residents while progress continued at a slow pace elsewhere, it is clear that pressure for a public warning system was building at nearby facilities when Rhone Poulenc made its commitment to local residents.

Citizen Audit. Rhone Poulenc was already subject to an independent auditor's assessment under Texas law when it incorporated an independent annual environmental and safety audit program in the GNA.⁶⁹ The only difference between what was previously required and the GNA provision concerned the involvement of local residents in the process. Citizens were to participate in the physical inspection of the plant, review of documents, and interview of plant personnel. The GNA specified Dr. Ralph Cooper of the American Institute of Hazardous Materials Management (an individual who had been active in the drafting of RCRA) as the initial auditor. His report, issued several months after the GNA was finalized, focused on several regulatory compliance and best management practice issues where Rhone Poulenc stood to improve:

- more attention should be given to the lay-down yard for possible recycling and other reductions in the amount of materials in the yard
- soil and other materials removed from the settling pond should be removed from the site more frequently
- the facility should develop and implement a program to make appearance of the facility a matter of pride among employees at all levels
- particular attention should be given to *leaks of sulfur*, appearance from the street, and evident corrosion of the equipment
- there seemed to be less concern regarding waste generated during normal industrial operations than for waste received for incineration and residuals
- should consider making more frequent hazardous waste and Texas waste classification determinations
- should record video and store tapes for a short period for post-incident analysis

⁶⁶ *Supra* note 17; Interview with Manchester resident, April 22, 2002 in Manchester; Interview with Manchester resident, August 12, 2002 via telephone; *Supra* note 26; Zuniga, J. (1995). A community's work for safety pays off: Chemical company's siren alarm warns area residents of toxic leaks. *Houston Chronicle*, July 16, 1995 at 29A.

⁶⁷ Haines, R. (1993). Cities near plants address fears. *Houston Chronicle*, January 3, 1993 at 1C.

⁶⁸ *Ibid.*

⁶⁹ 31 TAC 305.147 and Section X TWC permit No. HW-50095.

- written emergency response plan is weak; should enhance the facility's programmatic plant-wide analysis of potential accident events and their prevention (single master plan is preferred rather than multiple plans for RCRA, Clean Water Act, etc.)
- need to decide in advance when evacuation is necessary and what gear and decontamination equipment is appropriate under different circumstances
- more detailed analysis of the *sources of acid losses to wastewater* as well as the generation of wastewater in total
- evaluation of surface protection for secondary containment and other surfaces needed given the fact that *unprotected concrete rapidly degrades with acid exposure*
- materials used for line cleaning are burned in the incinerator; *review of alternatives may suggest cost-effective changes*
- plant should request delisting or permit modification for delisting scrubber sludge to allow disposal in a non-hazardous waste landfill.⁷⁰

These recommendations, some of which have been implemented (filter sludge was delisted in 1999), point to the existence of ways to reduce accidental emissions and the need to more purposefully counter the corrosive nature of the materials used at the facility. Further joint development of additional recommendations has not occurred, however. Each year, in accordance with state regulations, the plant has issued a public notice for selection of an independent auditor, and held a public meeting with little or no attendance. There has never been another independent audit of the facility.⁷¹

Community Advisory Council. Rhone Poulenc's primary objective in negotiating with Manchester residents was to institutionalize a relationship between the plant and local residents. The GNA includes specific instructions ("groundrules" as the former plant manager called them) for how a Community Advisory Council (CAC) should be set up: it should be geographically representative of the local community surrounding the facility, be composed of no more than 25 members, include residents located within set boundaries (north to Harrisburg Street, west to 97th Street, east of the plant to Evergreen Street, and south of the plant to La Porte Freeway), set its own agenda, be notified by the company of changes to hazardous waste transportation routes and shipments to the plant, receive copies of groundwater and surface water monitoring analyses on a monthly basis, receive OSHA recordable accident information on a monthly basis, and work to review the feasibility of a citizens' health survey. The CAC met monthly at first and now meets once per quarter. At each meeting, two reports are provided to CAC members: a report from the Environmental Manager and the state-mandated Discharge Monitoring Report. Below is a sample of the Environmental Manager's report:

Rhodia, Inc. Manchester Plant
 Monthly Citizens Advisory Committee Report
 Month: January
 Year: 2000
 Have any changes been made to hazardous waste transportation routes? No
 Number of hazardous waste shipments into the plant: 170/month
 Copies of Permit Discharge Reports:
 EPA (DMR)
 RCRA Pond has been closed and no more groundwater monitoring necessary
 Number of OSHA recordable accidents: 2

⁷⁰ Independent Auditor's Report under 31 TAC 305.147 and Sec. X TWC Permit No. HW-50095.

⁷¹ *Supra* note 49.

Leaders of the three civic organizations of Manchester, Smith Addition, and Harrisburg sit on the CAC and praise the company's sustained involvement in local issues and projects. For instance, Rhone Poulenc (and now Rhodia) has provided an annual \$10,000 college scholarship award to a local high school student, cleaned sidewalks, painted homes, provided a block of funds to be allocated to various groups, and improved Pizer Park, across the street from the plant.⁷² Some residents have resigned from the Council, frustrated by its focus on such projects that benefit individuals or segments of the community rather than facility changes that will benefit residents at-large. Because of the limited variance in terms of facility operations, Rhodia management agrees that the focus of the CAC has shifted from explaining permits, modeling and monitoring results to community improvements and awareness. In the event of an accident, Rhodia anticipates the CAC meeting by developing an analysis of the incident, causation, and corrective actions taken.

Railroad Tracks/Truck Traffic. Facility management has sought to address what were arguably the most prevalent concerns of local residents in the early 1990's. Rhone Poulenc created a routing system to keep truck traffic away from JR Harris Elementary School, and to minimize exposure of any residential population to the movement of hazardous materials. These changes were made in consultation with the CAC, whereby Rhone Poulenc explained restrictions in its waste disposal contracts that could be used to minimize local transportation risks. While not included in the GNA, the company also appeared with residents in support of a grade separation and an overpass across Central Avenue. The overpass would allow residents evacuating Manchester to cross over Manchester Yard, one of several rail terminals serving the Ship Channel. The Houston

City Council approved funding for a feasibility study for the bridge in August, 1997.⁷³ Conditions worsened in February 1998 with the merger of Union Pacific and Southern Pacific Rail Corporation.⁷⁴ Union Pacific reportedly gave preferential treatment to moving their trains through the city first, causing even longer delays at railroad crossings. Finally, the U.S. House of Representatives passed a transportation bill that included



Figure 5. Railroad cars blocking Manchester Street on April 23, 2002.

⁷² Zuniga, J. (1994). Chemical plant is neighborly. *Houston Chronicle*, June 4, 1994 at 27A; Pickler, N. (1997). Residents help build playground at park. *Houston Chronicle*, June 29, 1997 at 38A; Plant workers make sidewalk safer for southeast area pupils, parents. *Houston Chronicle*, May 9, 2001 at 7 (This Week).

⁷³ Dawson, B. (1997). Living with pollution Part I: Communities in industrial sections of Houston grapple with pollution with varying success. *Houston Chronicle*, August 3, 1997 at 1A.

⁷⁴ Brewer, S. (1998). Idling trains strain patience of motorists. *Houston Chronicle*, February 9, 1998 at 13A.

\$16 million for the grade separation in June, 1998.⁷⁵

Information. Most elements of the GNA involved one-time or monthly provision of information already mandated by state law, such as hazard assessments, dispersion modeling, and a consequence analysis. The exception, an agreement to “review the feasibility of a citizens’ health survey,” has never been attempted. Facility management admits that the sum promised in the GNA, \$4,000, was barely a fraction of what would be needed for a cross-sectional epidemiological study of Manchester and a carefully selected control community. Residents continue to express their concerns regarding the prevalence of cancer in the area. Yet, the CAC has to date been unable to mobilize sufficient support to initiate serious talks with Rhodia about such a study.

Discussion

A very telling announcement was made by a number of industries, including Rhone Poulenc, five days before its permit modification was issued in December, 1992: they would agree to take part in the TWC’s Clean Industries 2000 program.⁷⁶ In order to qualify for the program, a company had to agree to either make at least a 50% reduction in its generation of toxic substances, or commit to a similar reduction in its direct release. The news was followed by word that area industries had been working since at least the late 1980’s to develop public warning systems. A more recent conclusion to negotiations between residents and officials with neighboring Lyondell and Equistar Chemicals has led to substantial emissions cuts.⁷⁷ The latter agreement was reached with two facilities that together released 20% of the benzene in Harris County. With the help of a facilitator who also managed discussions on the area CAP, residents met with the companies 32 times following planned facility expansions in 1997 that were later scrapped. The discussions yielded changes in plant procedures, processes, and equipment, and have already reduced emissions of benzene by 40% and butadiene by 41%.

Following its inclusion in Clean Industries 2000, Rhodia’s toxic emissions have not been significantly reduced, although total production-related waste has fallen dramatically.⁷⁸ The above developments suggest that improvements in Manchester-Rhodia relations (achieved through regular explanations of operations to the CAC, community improvement projects, and a near elimination of facility episodes) mask some potentially missed opportunities. Current projects at the facility, such as its Layers of Protection Analysis and mechanical integrity programs as well as reductions in production-related waste suggest that there was in fact room for improvement in terms of how the facility produced and handled its waste streams when the GNA was negotiated. Indeed, the sole independent audit performed at the site unearthed concerns with corrosive materials and

⁷⁵ Feldstein, D. (1998). Transportation bill increases spending for projects in Texas. *Houston Chronicle*, June 10, 1998 at 17A.

⁷⁶ Dawson, B. (1992). 75 facilities promise to cut emissions under state plan. *Houston Chronicle*, December 11, 1992 at 36A.

⁷⁷ Dawson, B. (2000). Channelview project seen as model in cutting pollution. *Houston Chronicle*, November 15, 2000 at 31A.

⁷⁸ Toxic air releases were 24,218 pounds in 1992 and 25,765 pounds in 2000 (Rhodia did not have any water, land, or underground injections of toxicants in these years). At the same time total production-related waste fell from 14,429,232 pounds in 1992 to 9,261,910 pounds in 2000. *Supra* note 18.

secondary containment of spills that could have been further explored with residents. The facility's permit, reissued on December 14, 2000, calls for a five year Source Reduction and Waste Minimization Plan in addition to an annual report submitted to the TNRCC.⁷⁹ The GNA has provided scant means of involving residents in mandated source reduction planning.

As this agreement was the first of its kind, it most strongly reflects the need to develop means of institutionalizing a new relationship, based in large part on information sharing, in ways that will encourage further improvements to environmental quality and operational efficiency. Nothing in the GNA anticipated the possibility of such joint efforts, or how they could be linked to those of neighboring industries. As Rhone Poulenc continued to hold community events attended by hundreds of residents, and hired a local business leader to offer tours of the plant, residents, particularly senior citizens, continued to feel as though an opportunity had been squandered. Carol Alvarado, sensing this undercurrent of disappointment, announced in 1997 that she wanted to engage nearby industries in talks about ways to reduce routine emissions, through a focus on production, technology, purchasing, and updating equipment.⁸⁰

Now, the community, without the constant presence of Alvarado and other seasoned leaders, has to press for these improvements with a more transient, preoccupied, and in some respects assured population than what had endured high-profile accidents in the early 1990's. Residents currently lack the assistance of experienced community organizers such as those employed by Texans United. Their new civic club leader, employed by Rhodia to help maintain Pizer Park, believes that the plant and other area facilities are responsive to the community's requests. At a recent meeting of the civic club, members of the Southeast Chapter of Mothers for Clean Air encouraged residents to join a local "bucket brigade."⁸¹ Their demonstration of how to use the air sampling technology was met without a single question or volunteer. The dozen residents at the meeting turned to more immediate concerns, such as traffic safety.

In 2000, Rhodia successfully renewed its RCRA Permit. CAC approval was used in part to request exemption from the required installation of a hydrocarbon and opacity monitor.⁸² Long before renewal, the benefits to Rhodia of structured relations with residents were made clear, in the lack of opposition to other minor permit modifications, positive media coverage, and accidents that did not result in legal action or increased regulatory scrutiny. Residents negotiating future good neighbor agreements must ask themselves: Were the conditions of Manchester, Smith Addition, and Harrisburg *similarly* improved *because of* the GNA? In developing the agreement with Manchester residents, facility management was able to anticipate regulatory changes and respond to regional trends in a matter that appeared groundbreaking. Indeed, from the standpoint of community-corporate relations at the time, it was. Still, these relations were created at

⁷⁹ Permit for Industrial Solid Waste Management Site issued under provisions of Texas Health and Safety Code Ann. Chapter 361, Permit No. HW-50095-001 issued to Rhodia Inc., December 14, 2000.

⁸⁰ *Supra* note 73.

⁸¹ Observation of April 17, 2002 meeting of the Manchester Civic Club.

⁸² *Supra* note 56; Order, Application of Rhodia Inc. for a Regulatory Flexibility Order Exempting Rhodia from the Requirements of 30 Tex. Admin. Code Sec. 111.127, July 7, 2000.

little or no cost to the company over the years when compared with what could have been expected of the facility. They also split the most concerned segment of the population, the senior citizens, into two groups: representatives who received constant updates and developed vested interests in their relationship with the plant, and outsiders, who never saw their true interests (i.e., health) addressed. In an unstructured, unassisted negotiation setting, Rhone Poulenc was able to take bits and pieces of resident concerns and create an acceptable proposal given anticipated constraints. Future community-corporate negotiations will be judged by the extent to which they can secure and perpetuate resident involvement in purposive facility change that goes above and beyond the “projected status quo.”